

ORIGINAL

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROCKLAND VENDING CORP.,

Plaintiff,

-against-

07 CIV 6268 (WP) (MPF)

ROXANNE CREEN,  
sued in her individual capacity,  
MARSHA F. RILEY,  
sued in her individual capacity,  
STEWART KIDDER,  
sued in his individual capacity,

Defendants.

Date: November 15, 2007  
Time: 10:10 a.m.  
Place: 235 Main Street  
Poughkeepsie, New York

DEPOSITION OF ROXANN CREEN,

a Defendant in the above-captioned matter, held pursuant to  
Agreement, at the above time and place, before Gail M.  
Sherry, CRR, RPR, RMR, a Notary Public of the State of  
New York.

COURT REPORTING ASSOCIATES, INC.  
1699 Route 6; P.O. Box 113  
Carmel, New York 10512

(845) 225-0024

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2 A P P E A R A N C E S

3  
4 SUSSMAN & WATKINS  
Attorneys for Plaintiff  
40 Park Place  
5 P.O. Box 1005  
Goshen, New York 10924  
6 BY: MICHAEL H. SUSSMAN, ESQ.

7  
8 STATE OF NEW YORK  
9 OFFICE OF ATTORNEY GENERAL  
10 Attorney for Defendants  
235 Main Street  
Poughkeepsie, New York 12601  
11 BY: DANIEL SCHULZE, ESQ.

12 A L S O P R E S E N T:  
13 Michael Freed

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2 S T I P U L A T I O N S  
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5 IT IS HEREBY STIPULATED AND AGREED, by and between the  
6 attorneys for the respective parties hereto, that the  
7 sealing and filing of the within deposition be waived.

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9  
10 IT IS FURTHER STIPULATED AND AGREED that this  
11 deposition may be signed and sworn to before any officer  
12 authorized to administer an oath with the same force and  
13 effect as if signed and sworn to before the officer before  
14 whom said deposition is taken.

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17 IT IS FURTHER STIPULATED AND AGREED that all  
18 objections, except as to form, are reserved to the time of  
19 trial.

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1  
2 ROXANN CREEN,  
3 having been first duly sworn by Gail M. Sherry, a  
4 Notary Public of the State of New York, was  
5 examined and testified as follows:  
6 \* \* \* \* \*  
7 EXAMINATION BY MR. SUSSMAN:  
8 Q. Please state your name and address for the  
9 record.  
10 A. Roxann Creen, R-O-X-A-N-N, C-R-E-E-N.  
11 MR. SCHULZE: She can be reached through  
12 our office.  
13 Q. Good morning, Ms. Creen. I'm Michael Sussman.  
14 I represent the plaintiffs in this case, and you're here  
15 for what's called a deposition.  
16 Have you ever had a deposition taken before?  
17 A. Yes, I have.  
18 Q. How many years ago?  
19 A. About eight.  
20 Q. Just to briefly review, then, I'll ask you a  
21 single question at a time. Assuming you do understand  
22 the question, please answer that question. If for  
23 whatever reason you don't understand the question, then  
24 please don't answer the question and indicate in  
25 whatever verbal way you can that you don't understand

1 ROXANN CREEN  
 2 the question, and I'll ask you it in a different way or  
 3 louder or some other way that hopefully gets you to  
 4 understand and answer the question.

5 It's important that you answer the question  
 6 that's asked of you.

7 A. Okay.

8 Q. So if you don't understand it, as I said,  
 9 that's fine, and we'll try to get to a point where you  
 10 do understand it.

11 You have to answer verbally.

12 A. Okay.

13 Q. And I'll ask you a question and I'll let you  
 14 then answer that question fully. Please give me the  
 15 courtesy of allowing me to finish my question even  
 16 though you may know where I'm going and, likewise, even  
 17 if I know your answer or if I don't like your answer,  
 18 I'm going to let you answer. I'm not going to interrupt  
 19 you, certainly not knowingly.

20 As I say, give your answers verbally. We're  
 21 not at a less formal setting. This is just like being  
 22 in a court, so you have to give an answer. You can't  
 23 nod, gesticulate. Ms. Sherry, while she's a wonderful  
 24 reporter, she can't interpret what you're trying to say.  
 25 It's really not her role here today.

5

1 ROXANN CREEN  
 2 A. Okay.  
 3 Q. Counsel has a right to object, which I know he  
 4 knows and it's specified in the rules, but unless he  
 5 directs you not to answer the question, please answer  
 6 the question. He may want to preserve certain  
 7 objections, and that is within his rights.

8 If he does interpose an objection and you need  
 9 the question rephrased or read back, I may ask  
 10 Ms. Sherry to read the question back.

11 Do you understand all of that?.

12 A. Yes.

13 Q. Okay. Do you currently work for the State of  
 14 New York?

15 A. Yes, I do.

16 Q. What position do you now hold?

17 A. An Institutional Steward.

18 Q. How long have you been an Institutional  
 19 Steward?

20 A. Since January of 2004.

21 Q. How did you become an Institutional Steward?

22 A. I had taken a test and passed the test and was  
 23 selected to fill that position.

24 Q. Civil service position?

25 A. Yes.

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1 ROXANN CREEN  
 2 Q. And you were appointed?  
 3 A. Yes.  
 4 Q. Do you know who the appointing authority is?  
 5 A. It has to go through our Central Office. It  
 6 has a four-way sign-off, so I'm assuming someone in  
 7 Central Office has to do the final approval.

8 Q. By "Central Office," you're talking about  
 9 DOCS?

10 A. Yes.

11 Q. Were you interviewed for this position?

12 A. Yes, I was.

13 Q. And who interviewed you?

14 A. Deputy Superintendent for Administration, Kay  
 15 Knott, K-N-O-T-T.

16 Q. Did anyone in Albany interview you for this  
 17 position?

18 A. No.

19 Q. Immediately before January 2004 and assuming  
 20 this position, what job did you hold?

21 A. Purchasing Agent.

22 Q. How long did you work as a Purchasing Agent?

23 A. I don't recall. I had held various titles  
 24 since I started with the State.

25 Q. When did you start with DOCS?

7

1 ROXANN CREEN  
 2 A. January of 1986.  
 3 Q. Were you always in the purchasing area at  
 4 DOCS?  
 5 A. I was clerical for the first two years, and  
 6 then I went into purchasing.  
 7 Q. So by 1990 were you in purchasing?  
 8 A. Yes.  
 9 Q. Did you remain in purchasing as between 1990  
 10 and 2007?  
 11 A. Yes.  
 12 Q. As an Institutional Steward, to whom do you  
 13 report?  
 14 A. To the Dep of Administration, which is Kay  
 15 Knott, at Shawangunk.  
 16 Q. Do you report to anyone else?  
 17 A. She's my immediate supervisor.  
 18 Q. Do you report to anyone in Albany?  
 19 A. No.  
 20 Q. When you were Institutional Steward, did you  
 21 have a staff?  
 22 A. Yes, I do.  
 23 Q. How many individuals as of May 2007 were part  
 24 of your staff?  
 25 A. I have to count them.

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1 ROXANN CREEN  
 2 Q. Take your time.  
 3 A. I would believe ten at that time.  
 4 Q. What job titles did those people hold?  
 5 A. They are Head Account Clerk. Principal  
 6 Account Clerk. Commissary Clerk 4. Commissary Clerk 3.  
 7 Calculations Clerk 2. Calculations Clerk 1.  
 8 Storehouse. And Stores Clerk.  
 9 Q. What were your duties and responsibilities as  
 10 of May 2007 as Institutional Steward?  
 11 A. I was responsible for the State shop, the  
 12 storehouse, the commissary operations, and the  
 13 operations of the business office. Do you want to know  
 14 the rest of them too?  
 15 Q. Yes.  
 16 A. I conduct Tier 3 hearings. I am a part of the  
 17 Environmental Services Committee. I'm the core leader  
 18 for the accreditation for the business area. And I act  
 19 when Dep Knott is not in the facility.  
 20 Q. You act as what?  
 21 A. Acting Deputy Superintendent for  
 22 Administration.  
 23 Q. Had you had that panoply of duties for the  
 24 period since 2004 since you took the position?  
 25 A. Yes.

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 1 ROXANN CREEN  
 2 Q. Now, as of 2004 January when you took the  
 3 position, there were vending machines at your facility;  
 4 is that correct?  
 5 A. Yes, there were.  
 6 Q. And there was in place a contract with regard  
 7 to those vending machines; is that correct?  
 8 A. Yes, there was.  
 9 Q. And Rockland Vending had that contract; is  
 10 that correct?  
 11 A. Yes, they did.  
 12 MR. SCHULZE: Let him finish his  
 13 question.  
 14 Q. And that contract commenced in February 2003  
 15 for a period of three years; is that correct?  
 16 A. Yes, it is.  
 17 Q. And the contract was subject on its terms to  
 18 two renewals; is that right?  
 19 A. Two one-year renewals, yes.  
 20 Q. As of the due date of the contract, meaning  
 21 the termination date of the first three years, that  
 22 would have been in February of 2006, you were the  
 23 Institutional Steward at that time; is that right?  
 24 A. Yes, that's correct.  
 25 Q. Was the contract renewed at that time?

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 1 ROXANN CREEN  
 2 A. Yes, it was, for one year.  
 3 Q. And that renewal date then came as of February  
 4 2007 for the second one-year renewal; is that correct?  
 5 A. Yes.  
 6 Q. Was the contract renewed at that time?  
 7 A. Yes, it was.  
 8 Q. Who determined to renew the contract in  
 9 February 2007, if you know?  
 10 A. Well, that is the responsibility of the  
 11 facility, so basically it was my responsibility to  
 12 determine to renew it or not.  
 13 Q. Did you determine then to renew it?  
 14 A. Yes, I did.  
 15 Q. As of February of 2007 when you determined to  
 16 renew the contract, were there any outstanding  
 17 commissions owed to your facility by Rockland Vending,  
 18 if you know?  
 19 A. I do not know. I would have to check that.  
 20 Q. At the time in February of 2007, did you know?  
 21 A. Yes, I would have.  
 22 Q. Do you recall your state of knowledge at this  
 23 point?  
 24 MR. SCHULZE: Objection.  
 25 A. I'm sorry?

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12  
 1 ROXANN CREEN  
 2 Q. Do you recall at this point the state of  
 3 knowledge you had in February 2007 with regard to  
 4 whether there were commissions outstanding or not?  
 5 MR. SCHULZE: Objection.  
 6 A. I'm not sure what you're asking me.  
 7 Q. Okay. You're sitting here today and telling  
 8 me that today, if I hear you, you don't know whether in  
 9 February 2007 there were or were not commissions  
 10 outstanding; is that accurate?  
 11 A. Yes.  
 12 Q. You had a chance to prepare for today's  
 13 deposition; is that accurate?  
 14 MR. SCHULZE: Objection.  
 15 Q. Did you have a chance to prepare for today's  
 16 deposition?  
 17 MR. SCHULZE: Objection.  
 18 A. I don't know what you're asking me.  
 19 Q. Did you review any documents in preparing for  
 20 today's deposition?  
 21 A. No, I did not.  
 22 Q. Did you have conversations in January or  
 23 February of 2007 about the renewal of the contract with  
 24 anyone else?  
 25 A. Yes.

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1 ROXANN CREEN

2 Q. With whom did you converse?

3 A. My Head Account Clerk.

4 Q. Who was that?

5 A. Sharon Davis.

6 Q. What did Ms. Davis tell you at that time with  
7 regard to the contract?8 A. We just discussed whether we were going to  
9 renew it or not.

10 Q. What was the discussion, if you remember?

11 A. That there was one year remaining on it and  
12 whether we were going to bid it out at that time or  
13 whether we were going to go with Rockland for another  
14 year.15 Q. Do you remember anything else about the  
16 conversation?17 A. No, other than we probably discussed their  
18 past performance.19 Q. Well, apart from probably, since you're under  
20 oath, probably doesn't help me, and I don't want to  
21 pursue probably unless you remember that's what  
22 happened. Do you remember that's what happened?

23 MR. SCHULZE: Objection.

24 A. We discussed it. I'm not sure exactly what we  
25 discussed.

1 ROXANN CREEN

2 Q. Do you remember any of your discussion about  
3 Rockland's past performance in the context of  
4 discussions about renewing the contract?

5 MR. SCHULZE: Objection.

6 A. Repeat that.

7 MR. SUSSMAN: Read it back, please.

8 (Question read by the reporter.)

9 A. You're going to have to rephrase that because  
10 I'm not sure what you're asking me.11 Q. You said you had conversations with Ms. Davis  
12 regarding renewal of the contract; is that accurate?

13 A. Yes.

14 Q. And you say that you believe you had in those  
15 discussions some conversation about Rockland's past  
16 performance; is that correct?

17 A. Yes.

18 Q. What did you discuss with regard to their past  
19 performance?20 A. We discussed their payments. We discussed  
21 their service, their maintenance.22 Q. Any other subjects which you discussed at that  
23 time with Ms. Davis?

24 A. I don't recall that.

25 Q. Did Ms. Davis provide you with any written

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2 material showing the payment history of Rockland Vending  
3 in the context of discussing whether or not to renew?

4 A. No.

5 Q. Did you ask for any?

6 A. No.

7 Q. Did you have any?

8 A. Written proof?

9 Q. Yes, written.

10 A. Just -- we don't keep any particular log on  
11 it. We keep a receipt book showing his payments, and we  
12 keep a folder regarding his payments.13 Q. Did you review the receipt book in or around  
14 February of 2007 in the context of deciding whether to  
15 renew?16 A. No, because I knew what the past performance  
17 was.

18 Q. What was the past performance?

19 A. That Rockland was consistently late with their  
20 payments.21 Q. For how many years had that been true, that  
22 statement?23 A. Well, since I came on, which was January of  
24 '04.

25 Q. When you say "consistently late," how late

1 ROXANN CREEN

2 were they consistently with their payments?

3 A. Three to four months.

4 Q. Had that been a practice, to your knowledge,  
5 since 2004?

6 A. Yes.

7 MR. SCHULZE: Objection.

8 Q. With regard to the maintenance, you mentioned  
9 another subject you discussed was maintenance?

10 A. Uh-huh.

11 Q. What did you and Ms. Davis discuss concerning  
12 maintenance?13 A. We discussed about when they came in, if there  
14 was a problem with the machine, how often -- you know,  
15 if they came in quickly to respond to a machine being  
16 broken.17 Q. What did you and she say regarding maintenance  
18 at that time?

19 A. That, I discussed with someone else.

20 Q. Who was that with?

21 A. Marjorie Davis -- Marjorie Gardner.

22 Q. What was Ms. Gardner's role?

23 A. She was the contact with Rockland when the  
24 machines were not functioning properly.

25 Q. What did she say to you, if anything, about

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1 ROXANN CREEN  
 2 the timeliness of their maintenance in early 2007?  
 3 A. I remember we talked about different times  
 4 they would come in and try to repair the machine but  
 5 needed parts and would have to take a few days to repair  
 6 them.

7 Q. Did Ms. Gardner express any opinion as to  
 8 whether she felt the second renewal should be entered  
 9 into or not?

10 A. I don't believe so.

11 Q. Did Ms. Davis express any opinion on that  
 12 subject?

13 A. Yes, probably.

14 Q. Do you remember her opinion?

15 A. Well, we discussed at length whether we would  
 16 renew it or we weren't going to renew it.

17 Q. I understand that. What was her opinion?

18 A. I don't recall.

19 Q. You mentioned service as a third area which  
 20 you discussed with regard to Rockland Vending at or  
 21 about the time the decision on renewal came up in 2007.

22 With whom did you discuss the issue of service?

23 A. Service would have been again with Sharon  
 24 Davis or Marjorie Gardner.

25 Q. What, if anything, did either of those women

1 ROXANN CREEN  
 2 tell you about service?  
 3 A. That we were -- you know, that they would be  
 4 able to talk to them at different times and explain the  
 5 problems. By "service," I mean the maintenance also  
 6 portion of it, not really anything else.

7 Q. In 2007, January or February, did you have any  
 8 conversations with Mr. Freed concerning Rockland Vending  
 9 and its performance at Shawangunk?

10 A. Probably not. I communicated most of the time  
 11 by e-mails. He was difficult to get ahold of.

12 Q. So you made efforts in January and February to  
 13 speak with him?

14 A. By e-mail.

15 Q. By phone?

16 A. I don't recall that.

17 Q. Did you have any conversations in January,  
 18 February of 2007 with Mrs. Freed?

19 A. I don't recall speaking with her, no.

20 Q. Did you have any conversations with anyone  
 21 else who you understand to be representative of Rockland  
 22 Vending in January, February of 2007 concerning the  
 23 company's performance?

24 A. No, I wouldn't have. Most of the  
 25 conversations with Rockland were done by Marjorie

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1 ROXANN CREEN  
 2 Gardner.

3 Q. Do you know whether Ms. Gardner had any  
 4 conversations with Mr. Freed in the time period I've  
 5 specified?

6 A. I don't believe so.

7 Q. Did you direct her to, in that time period,  
 8 have any conversations?

9 A. I don't believe so.

10 Q. What about with regard to Mrs. Freed, did you  
 11 direct Ms. Gardner to have any conversations with her in  
 12 that time period?

13 A. I didn't, but Marjorie made some phone calls  
 14 herself. Whether they were during that time period or  
 15 not, I don't know.

16 Q. Are there any records that you know of  
 17 of those phone calls and what was communicated?

18 A. There may be a record of them, but I don't  
 19 know what was said during the conversations.

20 Q. Who has the record; do you know?

21 A. No, I do not.

22 Q. After the second renewal of the contract  
 23 around February of 2007, when did you next speak with  
 24 Mr. Freed, you yourself?

25 MR. SCHULZE: You're talking about oral

1 ROXANN CREEN  
 2 communication?

3 MR. SUSSMAN: Yes. Speak.

4 A. It was May 11th.

5 Q. What day of the week is May 11th; do you know?

6 A. Friday.

7 Q. Was this after the incident at the facility  
 8 involving Mr. Gallagher?

9 A. Yes, it was.

10 Q. What time of the day did you speak with him on  
 11 May 11th?

12 A. It was probably around 11:00.

13 Q. Is this a call you made or he made?

14 A. I made.

15 Q. To whom did you make the call?

16 A. To Rockland Vending.

17 Q. And you asked to speak to Mr. Freed?

18 A. Yes.

19 Q. And you did speak to Mr. Freed?

20 A. Yes, I did.

21 Q. When before May 11th and after the renewal, if  
 22 ever, had you called to speak with Mr. Freed before May  
 23 11th?

24 A. I don't recall.

25 Q. Do you recall ever doing that?

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1 ROXANN CREEN

2 A. Well, I had spoken to him probably in 2006.  
 3 Q. I'm talking about the period after the renewal  
 4 in February of 2007 and you've given me a date of May  
 5 11th when you say you did speak to him, and I asked you  
 6 between the renewal and May 11th, did you call to speak  
 7 with Mr. Freed on any other occasions?

8 A. I had called Rockland on different occasions,  
 9 but he was never available to speak to.

10 Q. When did you call?

11 A. I spoke -- on May 9th, I definitely spoke with  
 12 Cheryl that day.

13 Q. Who is Cheryl?

14 A. Cheryl Freed.

15 Q. What time did you speak with her?

16 A. That was shortly after 9:00.

17 Q. Did you initiate the call?

18 A. Yes, I did.

19 Q. Were you at your facility?

20 A. Yes, I was.

21 Q. Where were you?

22 A. In my office.

23 Q. What phone number did you call from?

24 A. What phone number? The facility phone.

25 Q. What phone number did you call from?

1 ROXANN CREEN

2 A. My extension.

3 Q. Which is?

4 A. 3100.

5 Q. What's the phone number?

6 A. 845-895-2081.

7 Q. And this is around 9:00 on the 9th?

8 A. Yes.

9 Q. Did you reach her?

10 A. Yes, I did.

11 Q. What was the conversation?

12 A. I had explained to her what had happened that  
 13 morning.

14 Q. What did you say?

15 A. With the driver. I explained to her that when  
 16 the driver had come in that morning, that we had  
 17 requested him to give us the money from the machines  
 18 that he was opening and filling that day and that he had  
 19 done that and that we had given him receipts for the  
 20 money that he collected out of the machines.

21 Q. So this is after that had happened?

22 A. Yes.

23 Q. And you're saying it's about 9:00 in the  
 24 morning you had this conversation?

25 A. Yes. Nine, 9:10, something like that.

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1 ROXANN CREEN

2 Q. Did you say anything else that you can now  
 3 recollect to Cheryl Freed on that date?

4 A. She requested that I fax her copies of the  
 5 receipts, which I did.

6 Q. Did you say anything else? That was the  
 7 question.

8 MR. SCHULZE: Objection.

9 Q. Did you say anything else that morning to her?

10 MR. SCHULZE: Objection.

11 A. I don't believe so.

12 Q. How long did you converse with Ms. Freed for  
 13 at approximately 9:00 or 9:10 on May 9th?

14 A. Just a few minutes.

15 Q. Would you say more than ten minutes?

16 A. No.

17 Q. Do you have a recollection of the time before  
 18 that that you spoke with Ms. Freed?

19 A. No, I do not.

20 Q. You said you had made efforts to speak to  
 21 Mr. Freed but you were unable to speak with him. When,  
 22 to your knowledge, did you last make that effort before  
 23 May 9th?

24 A. I don't remember.

25 Q. Do you know what month it was in?

1 ROXANN CREEN

2 A. No, I don't.

3 MR. SUSSMAN: Mark this as Exhibit 1.  
 4 (Creen Ex. 1 - DOCS INVITATION FOR BIDS  
 5 marked for identification.)

6 BY MR. SUSSMAN:

7 Q. I'm showing you a document which has been  
 8 marked here today as Exhibit 1 to your deposition. It's  
 9 a lengthy document.

10 MR. SCHULZE: What is this being marked  
 11 as?

12 MR. SUSSMAN: Exhibit 1 to her  
 13 deposition.

14 Q. The first page is an Invitation for Bids for  
 15 Vending Machine Services, and it relates to a bid  
 16 opening date of November 4, 2002. And the document  
 17 consists of -- the first 11 pages seem to relate to that  
 18 Invitation for Bids. Do you see that?

19 A. Yes.

20 Q. Are you familiar with those 11 pages?

21 A. I understand what they are, yes.

22 Q. And are they on a form which is provided by  
 23 the Department of Correctional Services to potential  
 24 vendors?

25 A. Each -- it's kind of a boilerplate, but each

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1 ROXANN CREEN  
 2 facility does their own.  
 3 Q. And is the boilerplate provided by DOCS?  
 4 A. Yes.  
 5 Q. Can you identify those 11 pages as an  
 6 invitation for Bids which Shawangunk Correctional  
 7 Facility did provide in this time frame of October 2002?  
 8 A. It's prior to me going to that facility.  
 9 Q. You were not there at that facility then?  
 10 A. No, I was not.  
 11 Q. What facility were you at?  
 12 A. I was at Eastern New York Correctional  
 13 Facility.  
 14 Q. And you've never seen this document before, or  
 15 have you?  
 16 A. I have seen it. It's been in the Rockland  
 17 folder.  
 18 Q. So you've seen it before?  
 19 A. Yes.  
 20 Q. In this form signed on page 11 by Mr. Freed?  
 21 A. Yes.  
 22 MR. SCHULZE: You're still referring to  
 23 just the first 11 pages?  
 24 MR. SUSSMAN: That's correct.  
 25 Q. Have you ever read this document?

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1 ROXANN CREEN  
 2 A. Not in its entirety, no.  
 3 Q. And you mentioned earlier that it was in part  
 4 boilerplate. Are you familiar with the boilerplate  
 5 sections of this document?  
 6 A. Pretty much, yes.  
 7 Q. I direct your attention to paragraph 13, page  
 8 6. There's a provision in bold caps which says,  
 9 "Termination of Contractor's Employment for the  
 10 Convenience of the State of New York." Do you see that?  
 11 A. Yes.  
 12 Q. Are you familiar with that provision?  
 13 A. I believe so.  
 14 Q. As of May 9th, was the contract with Rockland  
 15 Vending terminated at your facility?  
 16 A. I'm sorry?  
 17 Q. As of May 9th, was the contract for Rockland  
 18 Vending terminated at your facility?  
 19 MR. SCHULZE: Objection.  
 20 A. I don't believe that it was May 9th.  
 21 Q. The answer is no?  
 22 A. The answer would be I don't believe. It is  
 23 either the 9th or the 11th.  
 24 Q. So it might have been the 9th; is that your  
 25 testimony?

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1 ROXANN CREEN  
 2 MR. SCHULZE: Objection.  
 3 A. It may have been the 9th or it may have been  
 4 the 11th. I don't have the document in front of me  
 5 stating what day I terminated them.  
 6 Q. Let me ask you this. When Mr. Gallagher came  
 7 to the facility on the 9th, had the contract been  
 8 terminated by then?  
 9 A. No.  
 10 Q. There's a provision in paragraph 14,  
 11 Suspension of Work. First paragraph, quoting, "The  
 12 Facility may order the Contractor, in writing, to  
 13 suspend performance of all or any part of the work for a  
 14 reasonable period of time as determined by the agency,"  
 15 close quote.  
 16 Do you see that provision?  
 17 A. Yes.  
 18 Q. Had the Rockland Vending contract been  
 19 suspended as of the time Mr. Gallagher came to your  
 20 facility on May 9th?  
 21 A. No, it was not.  
 22 Q. Was a suspension order ever entered with  
 23 regard to Rockland Vending at Shawangunk at any time, to  
 24 your knowledge?  
 25 MR. SCHULZE: Objection.

1 ROXANN CREEN  
 2 A. Not that I'm aware of.  
 3 Q. Directing your attention to "Inspection and  
 4 Acceptance of the Work," page 7, paragraph 17, did you  
 5 ever make a demand that Rockland Vending promptly  
 6 correct any work it had done at the facility?  
 7 MR. SCHULZE: Objection.  
 8 A. With regard to the repair of their machines.  
 9 Q. Is the answer to that question yes?  
 10 A. Yes, with regard to the repair of their  
 11 machines.  
 12 Q. Was that demand made in writing?  
 13 A. No, it was not.  
 14 Q. When was the last time such a demand was made,  
 15 to your knowledge, before May 9th?  
 16 A. I do not know.  
 17 Q. Do you know if such a demand was made during  
 18 calendar year 2007 and before May 9th?  
 19 A. I don't know.  
 20 Q. Directing your attention to paragraph 22,  
 21 entitled "Right to Audit," before May 9, 2007, if you  
 22 know, did anyone at Shawangunk request to see any  
 23 records and accounts of services by or from Rockland  
 24 Vending?  
 25 A. You're going to have to repeat that.

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1 ROXANN CREEN

2 MR. SUSSMAN: Read it back.

3 (Question read by the reporter.)

4 A. Request to see, no, they did not, but there  
5 were inquiries into Rockland Vending's payments.

6 Q. Inquiries by whom?

7 A. Inquiries by Support Operations, by Nan Ferri.

8 Q. When did Ms. Ferri make such inquiries?

9 A. Prior to that date, but I do not know the  
10 exact date.

11 Q. To whom did she make the inquiries?

12 A. To myself.

13 Q. How did you respond to her inquiries?

14 A. Over the phone, verbally.

15 Q. What did you say?

16 A. I gave them the past performance of their  
17 payments.

18 Q. When did this occur?

19 A. Well, it was prior to November 2006.

20 Q. What about after November 2006, did Ms. Ferri  
21 make any contact with you after November 2006 about  
22 Rockland Vending?

23 A. Yes, I believe she did.

24 Q. When?

25 A. I don't know.

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1 ROXANN CREEN

2 Q. What month?

3 A. Don't know.

4 Q. Was anything provided Ms. Ferri in writing  
5 after November 2006 by you?6 A. I would have to check my folder. I don't know  
7 that.8 Q. Directing your attention to paragraph ten,  
9 "Insurances."

10 A. What page?

11 Q. Four. To your knowledge, did Rockland Vending  
12 have any form of insurance when it did business at  
13 Shawangunk?14 A. I believe that's a requirement of the  
15 contract.16 Q. Were the submissions of any of those insurance  
17 policies made to your office, to your knowledge?

18 A. I don't know.

19 Q. Do you know whether they had insurance  
20 covering you for any claim of lost commission or failure  
21 to pay commission?

22 A. I don't know.

23 Q. The document which is after those 11 pages  
24 says Vending Machine Services Detailed Specifications.  
25 And, again, it's numbered at the bottom 1 through 4 and

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1 ROXANN CREEN

2 it's followed by Bid Pricing Tabulation Sheet. Do you  
3 know if the Vending Machine Services Detailed  
4 Specifications was part of the Invitation for Bids?5 A. My personal knowledge, I would not know. This  
6 was done by the prior steward. But I will assume that  
7 it was.8 Q. Are you familiar with the Vending Machine  
9 Services Detailed Specifications which are set forth  
10 here, pages 1 through 4?

11 A. Yes.

12 Q. According to page 4, as of 3/02, it was  
13 contemplated there would be nine vending machines in the  
14 visiting room. Do you see that?15 A. Uh-huh -- I'm sorry. Wait a minute. I think  
16 it says five here in the visiting room.17 Q. It says, "Visiting room. Two microwaves, two  
18 bill changers" --19 A. Okay. You're including the bill changers and  
20 the microwaves as equipment?

21 Q. Everything there.

22 A. Okay. That's five.

23 Q. Were those installed, to your knowledge?

24 A. Yes.

25 Q. Were all of the 18 vending machines which are

1 ROXANN CREEN

2 specified on page 4 installed?

3 A. Yes.

4 Q. The Attachment 1, which follows and proceeds  
5 until a page which says Total Bid Tabulation Sheet and  
6 is signed by Mr. Freed, do you know if that's a true and  
7 accurate copy of the bid that Mr. Freed made which is  
8 maintained in your offices?

9 A. I believe so.

10 Q. With regard to paragraph 14 on page 3 of the  
11 Detailed Specifications, it says, "The contractor agrees  
12 to pay the facility 15 percent of total gross sales by  
13 the 10th of the following month." Do you see that?

14 A. Yes, I do.

15 Q. Did your facility take any steps to determine  
16 total gross sales from the vending machines?17 A. We were only given what Mr. Freed provided or  
18 Rockland provided, and we never had -- to my knowledge,  
19 while I was there, we were not given the detailed  
20 explanation.21 Q. So where it says, "This payment shall include  
22 a detailed explanation per machine," the second sentence  
23 of paragraph 14 -- do you see that language?

24 A. Yes, I do.

25 Q. And you're saying from January 2004 on, that

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1 ROXANN CREEN 33  
 2 was not done?  
 3 A. That's correct.  
 4 Q. Was it ever demanded?  
 5 A. No, it was not.  
 6 Q. Attached to the actual bid which we've just  
 7 been talking about, there is a Standard Clauses For All  
 8 New York State Contracts. It's in smaller print and  
 9 three pages. Are you familiar with those provisions?  
 10 A. Yes.  
 11 Q. You are familiar with them?  
 12 A. Vaguely.  
 13 Q. If you skip a number of pages, you'll find a  
 14 document which says State of New York Department of  
 15 Correctional Services, Shawangunk Correctional Facility,  
 16 "This agreement is made between Shawangunk Correctional  
 17 Facility (facility) and the contractor."  
 18 MR. SCHULZE: Where are you referring to?  
 19 MR. SUSSMAN: Right there (indicating).  
 20 A. Okay.  
 21 Q. If you look at the second page of that, you  
 22 will you see a paragraph 8 which deals with  
 23 "Termination." And do you see the provision, "This  
 24 agreement may be terminated at any time upon mutual  
 25 written consent of the facility and the contractor.

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1 ROXANN CREEN 34  
 2 Also, the facility may terminate the agreement  
 3 immediately upon written notice of termination to the  
 4 contractor if the contractor fails to comply with the  
 5 terms and conditions of this agreement...?" Do you see  
 6 that?  
 7 A. Yes, I do.  
 8 Q. Before May 11 of 2007, was this agreement ever  
 9 terminated, to your knowledge?  
 10 A. No.  
 11 Q. Towards the end of this document, there's a  
 12 Table of Contents which says "July 2006" at the bottom  
 13 and the top right says "Appendix B." Do you know what  
 14 that document is?  
 15 A. It's a standard document that's attached to  
 16 various contracts.  
 17 Q. Is that boilerplate provided by the State of  
 18 New York, to your knowledge?  
 19 A. Yes, I believe it is.  
 20 Q. And did this govern this contract, this  
 21 document, to your knowledge?  
 22 A. Yes, it was attached and made a part of, too.  
 23 Q. Please look at page 11, paragraph 60. Do you  
 24 see where it says "Termination for Cause"?  
 25 A. Yes.

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1 ROXANN CREEN 35  
 2 Q. Are you familiar with that provision?  
 3 A. No. I would have to reread it.  
 4 Q. Had you ever read it before May 11th of 2007?  
 5 A. I don't recall.  
 6 Q. The For Cause provision says, "For a material  
 7 breach that remains uncured for more than thirty (30)  
 8 days or other specified period after written notice to  
 9 the Contractor..." Do you see that?  
 10 A. Yes, I do.  
 11 Q. Were you aware there was that provision in  
 12 this contract?  
 13 MR. SCHULZE: Objection.  
 14 A. I don't know. I don't know if I was or not.  
 15 Q. On May 11th you don't know whether you were  
 16 aware of that?  
 17 A. I don't know if I remember reading it or not.  
 18 Q. B says, For Convenience, quoting, "By written  
 19 notice, this contract may be terminated at any time by  
 20 the State for convenience upon sixty (60) days' written  
 21 notice or other specified period without penalty or  
 22 other early termination charges due."  
 23 Do you see that?  
 24 A. Yes, I do.  
 25 Q. Are you familiar with that provision?

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1 ROXANN CREEN 36  
 2 A. The same as the first one.  
 3 Q. Were you present at the facility on May 9,  
 4 2007?  
 5 A. Yes, I was.  
 6 Q. What time did you arrive?  
 7 A. 7:45.  
 8 Q. Is that your normal time of arrival?  
 9 A. Yes, it was.  
 10 Q. Did there come a time when you were aware that  
 11 a Mr. Gallagher from Rockland Vending had arrived at the  
 12 facility?  
 13 A. Yes.  
 14 Q. Where were you when you first saw  
 15 Mr. Gallagher that day?  
 16 A. I met him down in the entrance to the facility  
 17 by the visiting room.  
 18 Q. Had he come through any security gates by that  
 19 time?  
 20 A. No, he had not.  
 21 Q. What did he have with him, if anything, at  
 22 that time?  
 23 A. He had his cart to fill the machines.  
 24 Q. He had his cart. And did the cart have  
 25 anything on it?

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1 ROXANN CREEN  
 2 A. Yes.  
 3 Q. What did it have?  
 4 A. It had supplies to fill the vending machines.  
 5 Q. Were you and Mr. Gallagher alone then there or  
 6 was someone else present?  
 7 A. Marjorie Gardner was present at the time.  
 8 Q. Was there a conversation at that point between  
 9 you and Mr. Gallagher?  
 10 A. Yes, there was.  
 11 Q. Who initiated the conversation?  
 12 A. I did.  
 13 Q. And what did you say?  
 14 A. I explained to Mr. Gallagher that we were  
 15 going to go into the visiting room and when he was  
 16 emptying the machines, that we were going to request  
 17 that he give us the money and we were going to give him  
 18 a receipt for the money.  
 19 MR. SUSSMAN: Read back the answer.  
 20 (Answer read by the reporter.)  
 21 BY MR. SUSSMAN:  
 22 Q. So this was a request; is that right?  
 23 A. Yes.  
 24 Q. How did he respond to your request?  
 25 A. Well, I --

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1 ROXANN CREEN  
 2 MR. SCHULZE: Objection to the tone of  
 3 voice of that question.  
 4 A. I further explained to him that the reason we  
 5 were --  
 6 MR. SUSSMAN: Counsel, excuse me.  
 7 Counsel, that tone of voice was a whisper. If you want  
 8 me to start yelling at this witness, I will. Please  
 9 don't make any frivolous statements.  
 10 MR. SCHULZE: Well, for the record, the  
 11 term "request" was said in a sarcastic manner.  
 12 BY MR. SUSSMAN:  
 13 Q. How did he respond to your request?  
 14 MR. SCHULZE: Same objection.  
 15 Q. Go right ahead. It's not an objection.  
 16 A. I explained to Mr. Gallagher that the reason  
 17 we were doing this was because --  
 18 Q. How did he respond to your request? That's  
 19 the question that was asked of you.  
 20 MR. SCHULZE: Harassing the witness.  
 21 Q. That's the question asked of you.  
 22 MR. SCHULZE: Harassing the witness.  
 23 Q. Answer the question.  
 24 A. He responded to me by saying that Mr. Freed  
 25 was going to be very upset, would I please call the

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1 ROXANN CREEN  
 2 office and let him know what was going on. I advised  
 3 him that I would call the office; however, the office  
 4 wasn't available until 9:00.  
 5 Q. How did you know that?  
 6 A. Because different times when other people had  
 7 called him, there was no response before 9:00. Which he  
 8 also said, yes, he understood that.  
 9 Q. Okay. So he responded by asking you to call  
 10 Mr. Freed.  
 11 A. Yes, he did.  
 12 Q. And what did you do? What did you next do?  
 13 A. We proceeded into the visiting room and then I  
 14 started -- when he started to empty the machines, he  
 15 gave us the money, and we started to record how much he  
 16 had given us and wrote receipts per machine and signed  
 17 off on it. Marjorie Gardner signed off on it and  
 18 Mr. Gallagher signed off on it.  
 19 Q. And how long did all that take?  
 20 A. Probably a little over an hour.  
 21 Q. Did you have any other conversation with  
 22 Mr. Freed during that hour?  
 23 MR. SCHULZE: Mr. Freed?  
 24 A. With Mr. Freed?  
 25 Q. Mr. Freed.

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1 ROXANN CREEN  
 2 MR. SCHULZE: Objection.  
 3 A. No, I did not.  
 4 Q. Did you have any conversation with  
 5 Mr. Gallagher during that hour?  
 6 A. No.  
 7 Q. Were you present in the visiting room during  
 8 that hour?  
 9 A. Part of the time.  
 10 Q. For how much of the hour were you present?  
 11 A. Probably only ten minutes.  
 12 Q. Where were you the other 50 plus minutes?  
 13 A. I had to attend a department head meeting. I  
 14 was acting Dep of Administration that day, and we also  
 15 had a civilian medical emergency that I had to go to the  
 16 infirmary for.  
 17 Q. During the ten minutes that you say you were  
 18 in the visiting room, did you have any conversation with  
 19 Mr. Gallagher?  
 20 A. No. He just opened the machines and started  
 21 filling them and taking the money out.  
 22 Q. So the conversation you had with Mr. Gallagher  
 23 that you recounted earlier was in a hallway?  
 24 A. Yes, it was.  
 25 Q. Once you got into the visiting room, you and

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2 Mr. Gallagher had no conversation; is that right?  
 3 A. I don't know there was none, but we didn't  
 4 really converse about anything. He may have just again  
 5 asked me to call Mr. Freed.

6 Q. You remember him asking you to call Mr. Freed  
 7 when you were both in the visiting room?

8 A. No, I don't recall that, but he did definitely  
 9 ask that in the hallway several times.

10 Q. And the hallway where you had the conversation  
 11 with Mr. Freed, where was that hallway?

12 A. Right as you come in the facility before you  
 13 go through any of the locked gates.

14 Q. Did Mr. Gallagher replenish your machines that  
 15 day in the visiting room?

16 A. Yes, he did.

17 Q. And that was to your witness? You saw him do  
 18 that?

19 A. On the first machine while I was there.

20 Q. Do you know if he replenished any of the other  
 21 machines?

22 A. I believe he did.

23 Q. Do you have records which would show whether  
 24 he replenished the machines?

25 A. No.

1 ROXANN CREEN

2 Q. How much money was collected from the machines  
 3 on the 9th from Mr. Gallagher?

4 A. \$455.

5 Q. After the period of time spent in the visiting  
 6 room, where did Mr. Gallagher go?

7 A. He went to the employee lounge.

8 Q. Did you go with him?

9 A. No, I did not.

10 Q. Do you know what happened in the employee  
 11 lounge?

12 A. Well, he finished replenishing the machines in  
 13 there and took the money out of the machines he normally  
 14 would take it from.

15 Q. What did he do with that money?

16 A. He was also given receipts for that.

17 Q. What did he do with that money?

18 A. He gave it over to the people who were  
 19 collecting the money.

20 Q. Who was that?

21 A. Marjorie Gardner.

22 Q. How much money was collected from those  
 23 machines?

24 A. The \$455 was the total collected from all of  
 25 the machines that day. The specific amount from each

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2 machine, I don't know. I would have to look at the  
 3 receipts.

4 Q. In the previous three-and-a-half years that  
 5 you were the steward at the facility -- and you  
 6 indicated earlier that Rockland Vending was three and  
 7 four months behind on the payments -- had you ever done  
 8 this before?

9 A. No.

10 Q. Why did you do it on this date?

11 A. He continued to be behind in his payments, and  
 12 the Inmate Liaison Committee, that's the money that they  
 13 use for their family events -- the money that they  
 14 receive from Rockland Vending, the commissions from  
 15 machines is used for their family events, so they had  
 16 very little money and they were all complaining that  
 17 they did not get their commissions.

18 Q. Any other reason?

19 A. No. They were behind in their payments. And  
 20 that was the main one, that the Inmate Liaison Committee  
 21 had not been getting anything, and that's the money that  
 22 they rely on for things that they do for their families.

23 Q. What I asked you was, were there any other  
 24 reasons?

25 MR. SCHULZE: Objection.

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2 A. No.

3 Q. Did you clear this action with anyone else?

4 A. Yes, I did.

5 Q. Who did you clear it with?

6 A. With the counsel for Department of  
 7 Corrections.

8 Q. What's that individual's name?

9 A. George Glassanos.

10 Q. Can you spell it?

11 A. G-L-A-S-S-A-N-O-S.

12 Q. Where is Mr. Glassanos's office?

13 A. Albany.

14 Q. When did you clear this with him?

15 A. Prior to that day.

16 Q. When?

17 A. It was either the Monday or Tuesday before.

18 Q. How did you clear it with him?

19 A. Verbally.

20 Q. Is there any e-mail exchange about this?

21 A. There may be.

22 Q. You don't know?

23 A. No, I don't know.

24 Q. Are there any other documents concerning your

25 conversation with Mr. Glassanos that you're aware of?

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1 ROXANN CREEN

2 A. Yes, there is.

3 Q. What documents are there?

4 A. There are some e-mails between himself and  
5 myself and Nan Ferri.

6 Q. What date are those e-mails?

7 A. I don't know.

8 Q. Were they before the incident or after?

9 A. Both.

10 Q. Had you conversed with Mr. Glassanos about  
11 Rockland Vending before either the Monday or Tuesday in  
12 question, which would be the 7th or 8th of May?

13 A. No. That would have been a weekend.

14 Q. Well, at any time before that had you ever  
15 spoken with him?

16 A. No.

17 Q. You say you had verbal contact with him and it  
18 was either Monday or Tuesday. How many contacts did you  
19 have with him verbally?

20 A. I don't recall.

21 Q. More than one?

22 A. I don't know.

23 Q. Were these contacts from your office?

24 A. Yes.

25 Q. You called him?

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1 ROXANN CREEN

2 A. Yes.

3 Q. What did you say?

4 A. I explained to him what we had thought about  
5 doing with Rockland Vending and wanted to see if it was  
6 an okay thing to do or not.

7 Q. Well, what exactly did you tell him?

8 A. I asked --

9 MR. SCHULZE: Just so we're clear on  
10 this, we are not going to assert privilege on the  
11 subject matter of these communications.

12 MR. SUSSMAN: Right. You told the judge  
13 that the other day. I understand.

14 MR. SCHULZE: Go ahead.

15 BY MR. SUSSMAN:

16 Q. Go ahead. What did you tell him?

17 A. Well, I explained to him that Rockland was  
18 behind in their payments and we wanted to know if we  
19 would be able to do what we were planning -- what  
20 happened on the 9th, if we would be able to collect the  
21 money from the vending machines as they were being taken  
22 out.

23 Q. Did you tell him how far behind they were?

24 A. Yes.

25 Q. What did you tell him?

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1 ROXANN CREEN

2 A. I told him they were behind from February.

3 Q. Did he ask you any questions about what you  
4 had done to collect the money?

5 A. Yes.

6 Q. What did you tell him?

7 A. I had written various e-mails.

8 Q. Did you send him the e-mails you wrote?

9 A. I don't know if I did or not.

10 Q. When was the last such e-mail you wrote?

11 A. To Rockland?

12 Q. Yes.

13 A. Well, I remember one e-mail saying they were  
14 behind February, March, and April, so it would have been  
15 probably -- I don't remember when it was written, but  
16 there was one stating that fact.

17 Q. So you don't know whether that was written in  
18 April or May?

19 A. No, I don't.

20 Q. Did you say anything else to counsel that you  
21 can now recall?

22 A. No.

23 Q. What did he say to you?

24 A. He told me that what we had intended to do  
25 with taking the money and receipting it was okay to do.

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1 ROXANN CREEN

2 Q. Was that all he said?

3 A. Yeah.

4 Q. You mentioned an individual earlier named Nan  
5 or Nanette Ferri, F-E-R-R-I.

6 A. Yes.

7 Q. Who is she?

8 A. She works in Support Operations. I believe  
9 she's the Assistant Director.

10 Q. What is Support Operations?

11 A. It's a division of Corrections, and they  
12 handle some of the big contracts and stuff for the  
13 facilities. They handle vehicles, capital equipment,  
14 copier contracts.

15 Q. Do they handle vending contracts?

16 A. No. Well -- no.

17 Q. Does the division that she works for handle  
18 contracts that are not handled at the facility? Is that  
19 the division of labor?

20 MR. SCHULZE: Objection.

21 A. The division of labor? I'm sorry.

22 Q. Does the division that she works for in DOCS  
23 handle matters that are not handled at the facilities?

24 MR. SCHULZE: Objection.

25 A. She handles some of the large contracts that

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1 ROXANN CREEN  
 2 are not handled at the facilities.  
 3 Q. When did you first have contact with Ms. Ferri  
 4 regarding this vending contract?  
 5 A. Sometime probably in 2006.  
 6 Q. Can you be any more precise?  
 7 A. No.  
 8 Q. How was that contact initiated?  
 9 A. Phone.  
 10 Q. By you to her?  
 11 A. Could have been the other way around.  
 12 Q. Or from her to you?  
 13 A. It could have been either way.  
 14 Q. You don't remember?  
 15 A. No, I don't.  
 16 Q. Did you provide her any kind of report in  
 17 writing in 2006 concerning Rockland Vending?  
 18 A. There was information given to her. Whether  
 19 it was in writing or not, I don't know. I would have to  
 20 look in my folder.  
 21 Q. What was the substance of the information  
 22 given to her?  
 23 A. Whether Rockland was behind in their payments  
 24 or not and when their payments were made, how late they  
 25 were in making their payments.

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1 ROXANN CREEN  
 2 Q. Did you receive any direction from Ms. Ferri  
 3 other than providing you certain information -- other  
 4 than providing her certain information?  
 5 A. No.  
 6 Q. Did you speak with Ms. Ferri with regard to  
 7 the renewal of the Rockland Vending contract in or about  
 8 February of 2007?  
 9 A. Probably not.  
 10 Q. Who is Stewart Kidder?  
 11 A. He is the Director of Support Operations.  
 12 Q. Is he Ms. Ferri's boss?  
 13 A. Yes.  
 14 Q. Did you speak with Mr. Kidder regarding  
 15 Rockland Vending in 2006?  
 16 A. No.  
 17 Q. Did you speak with him about Rockland Vending  
 18 in 2007?  
 19 A. No.  
 20 Q. Did you speak with him between May 7th,  
 21 Monday, and May 11th, Friday, concerning Rockland  
 22 Vending?  
 23 MR. SCHULZE: Objection.  
 24 A. I don't believe so. Most of my conversations  
 25 were with Ms. Ferri and Mr. Glassanos.

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1 ROXANN CREEN  
 2 Q. Did you speak with him at all? I'm not asking  
 3 about most of your conversations. Did you speak with  
 4 him?  
 5 A. I don't remember.  
 6 Q. Did you get approval for taking the money on  
 7 the 9th as you did from Mr. Kidder?  
 8 A. No.  
 9 Q. Did you ask him for his approval?  
 10 A. No.  
 11 Q. Did Mr. Glassanos indicate to you that he had  
 12 spoken to Mr. Kidder about this?  
 13 A. He did not indicate that.  
 14 Q. Between May 7th and May 11th, did you talk to  
 15 Ms. Ferri --  
 16 A. Yes.  
 17 Q. -- concerning your plan?  
 18 A. Yes, I did.  
 19 MR. SCHULZE: Make sure you let him  
 20 finish the question. He might not be asking you what  
 21 you think he is.  
 22 THE WITNESS: Okay.  
 23 Q. When did you speak with her?  
 24 A. I don't recall the exact dates or times.  
 25 Q. It was the week, though, that you got the

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 2 money from Rockland Vending?  
 3 A. Yes, it was.  
 4 Q. What did you tell her?  
 5 A. I had also talked with her about what we  
 6 had -- would like to do with collecting the money from  
 7 Rockland, and she too said to contact George Glassanos  
 8 for his final approval.  
 9 Q. Did she give you her approval?  
 10 A. She thought it was a good idea if we were able  
 11 to do it.  
 12 Q. Did she indicate to you she knew of any  
 13 precedence for doing that?  
 14 A. No, she did not.  
 15 Q. Did Mr. Glassanos indicate to you he knew of  
 16 any precedence for doing that?  
 17 A. No.  
 18 Q. Did you ask him whether it had ever been done  
 19 before?  
 20 A. No, I did not.  
 21 Q. And did he tell you whether it had ever been  
 22 done before?  
 23 A. He did not.  
 24 Q. When you spoke with Ms. Ferri the week of May  
 25 7th and before May 9th, did you indicate to Ms. Ferri

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1 ROXANN CREEN  
 2 that you had suspended the Rockland Vending contract?  
 3 MR. SCHULZE: Objection.  
 4 A. We had not suspended it.  
 5 Q. Did you indicate to her that you had? I  
 6 understand that you hadn't. Did you indicate to her you  
 7 had?  
 8 MR. SCHULZE: Objection.

9 A. No.  
 10 Q. Did you indicate to her you had terminated the  
 11 contract?

12 MR. SCHULZE: Objection.  
 13 A. No.  
 14 Q. Did you discuss with her in your conversation  
 15 whether to suspend or terminate the contract?

16 MR. SCHULZE: Objection.  
 17 A. No.  
 18 Q. And did she suggest in that conversation the  
 19 week of May 7th terminating or suspending the contract?  
 20 A. The end of the week, after we found out that  
 21 Rockland wasn't going to be coming back.  
 22 Q. So earlier in the week and before the incident  
 23 with Mr. Gallagher, you had not discussed with her  
 24 suspending or terminating the contract; is that  
 25 accurate?

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1 ROXANN CREEN  
 2 A. That is correct.  
 3 Q. After November of 2006 and before May of 2007,  
 4 do you have any recollection of conversations with  
 5 Ms. Ferri concerning Rockland Vending?  
 6 A. I'm sure there were conversations, yes.  
 7 Q. Do you know when you had any such  
 8 conversations?  
 9 A. No, I don't.  
 10 Q. Are you sure there were such conversations  
 11 between November and February of 2007?  
 12 A. I'm sure there were.  
 13 Q. What was the substance of those conversations?  
 14 A. Whether or not Rockland Vending was up-to-date  
 15 on their payments.  
 16 Q. What did you report to her?  
 17 A. That they were not.  
 18 Q. Did she give you any direction between  
 19 November of 2006 and February 2007 with regard to that?  
 20 A. No, she did not.  
 21 Q. Did you ask her for any direction?  
 22 A. No.  
 23 Q. So other than reporting that Rockland Vending  
 24 was not up-to-date on their contract, was anything else  
 25 said about Rockland Vending by you to Ms. Ferri during

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1 ROXANN CREEN  
 2 those conversations?  
 3 A. No.  
 4 Q. Do you have a recollection in February of 2007  
 5 receiving reports from Mr. Freed that certain product  
 6 being put in certain of the vending machines was missing  
 7 without payment?  
 8 A. Yes.  
 9 Q. Did you ever discuss that with Mr. Freed?  
 10 A. By e-mail.  
 11 Q. Did you ever discuss it talking with him?  
 12 A. I don't remember that.  
 13 Q. Was that issue ever resolved, to your  
 14 knowledge?  
 15 A. I wrote back to him information that he was  
 16 requesting, and then I never heard any more about it.  
 17 Q. Did you do any investigation of his charge  
 18 that the product was being taken without payment?  
 19 A. Yes, I did.  
 20 Q. What investigation did you do?  
 21 A. I checked in the visiting room to see if  
 22 anyone was aware of them going in at odd hours, and  
 23 Mr. Freed asked for video from the visiting room, but  
 24 the cameras are not always running. They do not run in  
 25 the visiting room unless there is a reason that they

1 ROXANN CREEN  
 2 feel that there's going to be a problem in the visiting  
 3 room.  
 4 Q. So how did you respond to his request for a  
 5 video?  
 6 A. Just the same that I explained it; the cameras  
 7 are not constantly running and they're only put on when  
 8 there's a problem in the visiting room.  
 9 Q. So were you able to ascertain in any form or  
 10 fashion what was happening to the produce he said he was  
 11 delivering and not getting paid for?  
 12 A. No.  
 13 Q. And did he report to you in that time period  
 14 that between \$250 and \$450 a week of product was being  
 15 pilfered?  
 16 A. That was in his e-mails, yes.  
 17 Q. And did he indicate to you for what time  
 18 period that was happening?  
 19 A. I thought it was -- he said a couple of  
 20 months. But that was the first -- I only heard the one  
 21 time about it.  
 22 Q. You only got one e-mail about that?  
 23 A. I believe so, yes.  
 24 Q. Are you sure of that?  
 25 A. There was e-mails back and forth, the first

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1 ROXANN CREEN 57  
 2 one stating when -- how much had been taken.  
 3 Q. Did Mr. Freed report to you after the first  
 4 e-mail that it was a continuing problem?  
 5 A. Yes.  
 6 Q. Between the time he first reported that and  
 7 May 9th of 2007, did you and he, to your memory, ever  
 8 have a discussion of that problem?  
 9 A. No. Not that I recall.  
 10 Q. Did Ms. Gardner or Ms. Davis report to you  
 11 that she had had a discussion of that problem with  
 12 anyone at Rockland Vending?  
 13 A. I don't remember that.  
 14 Q. Apart from that issue, did Mr. Freed make  
 15 requests of you to increase the price of product sold in  
 16 his vending machines?  
 17 A. Once a year by contract they are allowed to  
 18 raise the prices.  
 19 Q. When during the year does that time come; do  
 20 you know?  
 21 A. I believe it's in February. January,  
 22 February.  
 23 Q. Is that the renewal date?  
 24 A. Yes, I believe so.  
 25 Q. Were the prices raised in February 2006, the

1 ROXANN CREEN 58  
 2 first renewal?  
 3 A. Yes.  
 4 Q. How much were they raised?  
 5 MR. SCHULZE: Objection.  
 6 A. I don't remember. It wasn't a lot.  
 7 Q. Did Mr. Freed make a proposal as to what he  
 8 wanted the raise to be?  
 9 A. Yes.  
 10 Q. Was that proposal accepted or rejected?  
 11 A. It was accepted.  
 12 Q. What about in 2007, February?  
 13 A. Yes.  
 14 Q. He made a proposal?  
 15 A. Yes, he did.  
 16 Q. And it was accepted?  
 17 A. Yes.  
 18 Q. According to an affidavit filed in this  
 19 lawsuit by Nanette Ferri on July 23, 2007, quoting, page  
 20 3, regarding Rockland Vending, "The contract was  
 21 terminated by written notice for nonpayment on May 11,  
 22 2007."  
 23 Are you familiar with that statement by  
 24 Ms. Ferri?  
 25 MR. SCHULZE: Objection.

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1 ROXANN CREEN 59  
 2 A. I'm not familiar with her statement. I  
 3 understand what she's talking about.  
 4 Q. Didn't you say a few minutes ago the contract  
 5 was terminated because you learned Mr. Freed was not  
 6 going to come and replenish Shawangunk?  
 7 A. Yes.  
 8 Q. Did you ever have a conversation with  
 9 Ms. Ferri concerning the termination of the Shawangunk  
 10 contract with Rockland Vending?  
 11 A. Yes, we talked about it.  
 12 Q. When did you have that conversation?  
 13 A. It would have probably been the 10th or the  
 14 11th when we found out Mr. Freed was not going to  
 15 continue to service our machines.  
 16 Q. How did you find that out?  
 17 A. When I spoke with him.  
 18 Q. You told me earlier you spoke with him on the  
 19 11th?  
 20 A. Yes, I did.  
 21 Q. So that's when you found out?  
 22 A. Yes.  
 23 Q. What time of day on that date did you speak  
 24 with him?  
 25 A. It was probably around 11:00.

1 ROXANN CREEN 60  
 2 Q. Were you the only participants, to your  
 3 knowledge, in the conversation?  
 4 A. Yes, on my end.  
 5 Q. Did he introduce anyone else as being party to  
 6 the conversation?  
 7 A. No.  
 8 Q. Was that a conversation you initiated or he  
 9 initiated?  
 10 A. I did.  
 11 Q. What, as you recall it, was the conversation  
 12 you had with Mr. Freed on the 11th of May about 11:00?  
 13 A. I had called him to find out that -- the 11th  
 14 was a normal day that they would service the vending  
 15 machines, and they normally came into the facility  
 16 between 8:00 and 9:30 to do that. By 11:00, no one had  
 17 shown up to service the machines, so I inquired as to  
 18 whether or not he had planned to come in that day to  
 19 fill the machines, and he told me that they did not plan  
 20 to come back.  
 21 Q. Is that all he said?  
 22 A. I believe he told me that the drivers were  
 23 afraid to come back into the facility.  
 24 Q. Did he say anything else?  
 25 A. Not that I recall.

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Q. Did you say anything else?

A. Not that I recall.

Q. Had you told Mr. Freed on the 9th of May that it was your intent to have whatever driver came give the monies retrieved to your facility?

MR. SCHULZE: Objection.

A. I did not speak with Mr. Freed.

Q. Did you tell Mr. Gallagher that?

A. What is the question?

Q. Did you tell Mr. Gallagher on the 9th that you intended to take the monies retrieved from the machines from the drivers in the future?

A. No.

Q. Never had that conversation at all?

A. No.

Q. Do you know whether any of your subordinates had that conversation with him?

A. I don't know that.

Q. Did you give them a direction to tell Mr. Gallagher that?

A. No.

Q. Was that your intention?

A. No.

Q. Was it your understanding as of May 11th when

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2 you spoke with Mr. Freed that Mr. Freed owed you 3 approximately \$1800 in commissions?

4 A. Repeat that.

5 Q. Was it your understanding when you spoke to 6 Mr. Freed on May 11th that Rockland Vending owed you 7 approximately \$1800 in commissions?

8 A. Yes.

9 Q. And that was subtracting from a larger total 10 the \$455 retrieved on the 9th; is that correct?

11 A. Yes. I'm not sure if the \$1800 is accurate. 12 I'm not positive of that, but it sounds about right.

13 Q. Well, you had no accounting; correct?

14 A. I could only estimate by prior months. 15 Q. By your testimony, the last month you received 16 any commission for was January, correct, before May 9th?

17 Is that right?

18 A. Yes.

19 Q. So you derived the \$1800 from estimates made 20 since January; correct?

21 A. Prior to January.

22 Q. Prior to.

23 MR. SUSSMAN: We're going to mark an 24 exhibit as 2 which is Ferri Exhibit 3, but let's just 25 mark it separately from her affidavit.

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MR. SCHULZE: If you're going to mark that separately, do you want to take it apart first?

MR. SUSSMAN: No. We're marking as Exhibit 2 a letter dated May 11, 2007, from Ms. Creen to Mr. Freed. That's what's being marked.

MR. SCHULZE: I don't object to marking that letter as an exhibit, but I do object to marking the entire Ferri declaration as an exhibit and saying you're only marking the letter.

MR. SUSSMAN: No, we're not marking anything other than that. I said it was part of that. I didn't say the whole thing was being marked.

(Crean Ex. 2 - 5/11/07 LETTER TO FREED FROM CREEN marked for identification.)

MR. SCHULZE: Do you have a copy?

MR. SUSSMAN: No.

BY MR. SUSSMAN:

Q. Showing you what's been marked as Exhibit 2 to your deposition, did you author that document?

A. Yes, I did.

Q. Did you author that document before or after you spoke with Mr. Freed on May 11th?

A. After.

Q. And you authorized that document after

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2 Mr. Freed told you that he was not going to further 3 service your facility at that point?

4 A. Yes.

5 Q. Is there any reference to your conversation 6 with Mr. Freed in that document?

7 A. Yes, there is.

8 Q. Where is the reference?

9 A. The very first paragraph, first sentence.

10 Q. What does it say?

11 A. "This is to confirm our conversation of 12 Friday, May 11, 2007, at approximately 10:25 a.m."

13 Q. Is that the only reference there to your 14 conversation?

15 A. To the conversation with Mr. Freed?

16 Q. Yes.

17 A. I believe so.

18 Q. Is there any reference in your letter to 19 Mr. Freed telling you that he was not going to service 20 your facility?

21 MR. SCHULZE: Objection. The letter 22 speaks for itself.

23 Q. Do you see any reference in the letter -- 24 you're the author of the letter --

25 A. Yes.

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 2 Q. -- to any statement by Mr. Freed that he was  
 3 not going to service your facility?  
 4 MR. SCHULZE: Objection.  
 5 A. I don't believe so. Just the conversation  
 6 with Cheryl.  
 7 Q. You said, "Just the conversation with Cheryl."  
 8 What's that a reference to?  
 9 A. It says that I spoke with Cheryl to find out  
 10 if she intended to stop the machines on Friday, and she  
 11 replied she did not know.  
 12 Q. Did you have a conversation with Cheryl on  
 13 Friday in which she said that?  
 14 A. No. It was on Thursday the 10th.  
 15 Q. There's a reference in the letter to paragraph  
 16 12, Termination for Cause. You have in front of you  
 17 Exhibit 1. The first page 5 of Exhibit 1, is that the  
 18 Termination for Cause provision you're referring to?  
 19 A. Yes.  
 20 Q. Did you share your letter with anyone else  
 21 before sending it?  
 22 A. Yes, I did.  
 23 Q. With whom?  
 24 A. George Glassanos, the attorney.  
 25 Q. What form did you share it? By e-mail? By

1 ROXANN CREEN 66  
 2 fax?  
 3 A. Fax.  
 4 Q. When was that?  
 5 A. On the 11th.  
 6 MR. SCHULZE: Just so you know, we're not  
 7 asserting privilege in this area either.  
 8 Q. Did you get any response from Mr. Glassanos?  
 9 A. Yes, I did.  
 10 Q. Was the response verbal?  
 11 A. Yes, I believe it was.  
 12 Q. Was it a call he made to you?  
 13 A. Yes.  
 14 Q. What did he say?  
 15 A. He said that he had read the letter and that  
 16 it was okay.  
 17 Q. Anything else?  
 18 A. Not that I remember.  
 19 Q. Is Mr. Glassanos employed, if you know, by  
 20 DOCS?  
 21 A. Yes.  
 22 Q. Was he in Albany?  
 23 A. Yes, he is.  
 24 Q. Did Mr. Glassanos make any changes to your  
 25 letter?

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 2 A. I don't believe he did.  
 3 Q. Did you share it with anyone other than him?  
 4 A. Dep Knott, probably.  
 5 Q. Do you remember doing that?  
 6 A. Probably. She is my supervisor.  
 7 Q. Did you get approval from her?  
 8 A. Yes.  
 9 Q. Do you remember getting approval from her?  
 10 A. Yes.  
 11 Q. And that was on the 11th?  
 12 A. Yes.  
 13 Q. Did the letter go out the 11th?  
 14 A. Yes.  
 15 Q. Do you know how it went out?  
 16 A. Certified mail, return receipt.  
 17 Q. Did you receive a return receipt?  
 18 A. Yes.  
 19 MR. SUSSMAN: Let's take a five-minute  
 20 break.  
 21 (Brief recess taken.)  
 22 BY MR. SUSSMAN:  
 23 Q. You testified you had a conversation on May  
 24 10th with Ms. Freed; is that right?  
 25 A. Yes.

1 ROXANN CREEN 68  
 2 Q. Was that at your initiative?  
 3 A. Yes.  
 4 Q. Do you know what time of day that conversation  
 5 was?  
 6 A. I want to say morning, but I'm not positive.  
 7 Q. During that conversation, did Ms. Freed ask  
 8 you whether your policy would be to confiscate funds  
 9 taken by any driver coming to the facility?  
 10 A. I don't recall.  
 11 Q. Do you recall any discussion of that with  
 12 Ms. Freed?  
 13 A. I really -- on my part of it, I just remember  
 14 asking her about if they were going to actually come in  
 15 on Friday to fill the machines. That was my main  
 16 question. If they were going to continue with their  
 17 contract.  
 18 Q. And in that light, do you remember if  
 19 Ms. Freed asked you whether you were going to confiscate  
 20 the funds that the driver collected on the next date?  
 21 A. I don't.  
 22 Q. Do you remember if that subject was or was not  
 23 discussed during that conversation?  
 24 A. I don't remember.  
 25 Q. And by that time, had you spoken with

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2 Mr. Glassanos regarding whether you would, in fact,  
 3 continue this policy of collecting or practice of  
 4 collecting from the drivers directly?

5 MR. SCHULZE: Objection.

6 A. I don't recall if I asked him that or not.

7 Q. So as of the 10th, as I understand it, the  
 8 next day the driver was supposed to come would have been  
 9 the 11th; is that right?

10 A. That's correct.

11 Q. Did you have approval for collecting monies  
 12 directly from the driver on the 11th?

13 A. No, because I didn't know if he was coming or  
 14 not.

15 Q. Well, did you -- before he would come, you  
 16 would seek approval whether or not to collect money from  
 17 him; correct?

18 MR. SCHULZE: Objection.

19 A. I would seek approval from --

20 Q. Mr. Glassanos or whoever you would seek  
 21 approval from?

22 A. Yes, probably.

23 Q. Had you done that? That's all I'm asking.

24 A. I don't recall.

25 Q. You don't recall whether you had done that.

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2 When you spoke to Mr. Glassanos and got  
 3 approval the first time, did he give you approval to do  
 4 this once, or did he give you approval to do it as many  
 5 times as you wanted to, or do you not recall?

6 A. I don't recall, but I -- I just don't recall.

7 Q. Do you remember what you asked him for  
 8 approval for?

9 A. For the first day. I don't recall if I asked  
 10 him for continuation or not.

11 Q. Did you ask him for approval to collect monies  
 12 up to the commissions due or commissions you thought  
 13 were due?

14 A. Yes, I believe -- yes, I believe I did.

15 Q. And is that what he approved?

16 A. Yes.

17 Q. So as of the 9th after Mr. Gallagher left, you  
 18 had ongoing approval from him, as far as you understood  
 19 it, to continue this practice; right?

20 MR. SCHULZE: Objection.

21 Q. You can answer.

22 A. He did say we can collect up to the amount  
 23 that was due, so, yes, I would have to say yes.

24 Q. And did you convey that to Ms. Freed when you  
 25 spoke to her on the 10th?

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2 A. That, I don't remember.

3 Q. Did you convey that to Mr. Gallagher when you  
 4 spoke to him on the 9th?

5 A. No.

6 Q. Did you convey that to Mr. Freed when you  
 7 spoke to him on the 11th?

8 A. No, I don't believe so.

9 Q. Do you know why you didn't convey that to  
 10 Mr. Gallagher?

11 MR. SCHULZE: Objection.

12 A. To Mr. Gallagher?

13 Q. Yes.

14 A. No. I just told him that day we were  
 15 collecting the money from him that day.

16 Q. Was Mr. Gallagher, to your knowledge, the  
 17 person who regularly serviced your facility?

18 A. Yes, I believe he was.

19 Q. Did Mr. Gallagher ask you whether you were  
 20 going to do this again subsequent days?

21 A. I don't believe he did.

22 Q. But from the permission that you sought from  
 23 Mr. Glassanos, you would agree that you intended to  
 24 continue to do that; is that right?

25 MR. SCHULZE: Objection.

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2 A. I would believe that's true.

3 Q. Now, you told us earlier that you worked at  
 4 Eastern Correctional Facility, as I understand it, in  
 5 the period before 2000 or before 2004?

6 A. Before 2004.

7 Q. And is Eastern the place you had been working  
 8 for a number of years?

9 A. Actually, it was for Division of Industry. I  
 10 had a field office at Eastern New York Correctional  
 11 Facility.

12 Q. Division of Industry is a part of DOCS?

13 A. Yes, it is.

14 Q. Were you involved before 2004 in the  
 15 purchasing matters?

16 A. Yes.

17 Q. Were you involved with vending machines?

18 A. No.

19 Q. You were not involved with vending machines at  
 20 all before 2004.

21 A. That's correct.

22 Q. Before 2004, when you were at Eastern, did you  
 23 have any knowledge of Mr. Freed?

24 A. No.

25 Q. Did you have any knowledge of Ellenville

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2 Vending?

3 A. No.

4 Q. Do you know who replaced Mr. Freed at  
5 Shawangunk?

6 A. Yes.

7 Q. Who?

8 A. Ellenville Vending.

9 Q. And it's your testimony, if I understand your  
10 testimony, that before then, that is before May of 2007,  
11 you didn't know Ellenville Vending?

12 MR. SCHULZE: Objection.

13 A. That's correct.

14 Q. How did they come into your facility in May?  
15 Was that by bid?16 A. We had contacted several local vending  
17 companies to see if they would be able to come in on an  
18 emergency basis to replace the machines if Rockland was  
19 not going to continue to service the machines.20 Q. So you had no intention to use Rockland's  
21 machines; is that right?

22 MR. SCHULZE: Objection.

23 A. If Rockland was going to continue to service  
24 the machines, they could have stayed as our vendor.

25 Q. But if they weren't? If they weren't going to

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1 ROXANN CREEN

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2 continue to service them, you weren't going to use their  
3 machines?4 A. That's correct, we were not going to use their  
5 machines.6 Q. Okay. And did Ellenville Vending come in at  
7 the same prices as Rockland had?

8 A. No, they did not.

9 Q. What was the difference in prices?

10 A. I don't know.

11 MR. SCHULZE: Objection.

12 Q. Do you remember that the difference in prices  
13 were significant?

14 MR. SCHULZE: Objection.

15 A. They were higher. Most of them. I don't  
16 remember what their prices were compared to Rockland's.17 Q. Just so I'm clear on your testimony, the first  
18 contact you say you had with Ellenville Vending was when  
19 they responded to the outreach you made for someone to  
20 replace Rockland; is that accurate?

21 A. Yes.

22 Q. Now, with regard to Mr. Kidder, just let me  
23 make sure I understand your testimony. As you sit here  
24 today, do you have any memory of speaking directly with  
25 Mr. Kidder about Rockland Vending at any time before

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2 this lawsuit was filed?

3 A. Before the lawsuit is filed? Yes, I had  
4 spoken to Mr. Kidder.5 Q. Okay. When did you speak to Mr. Kidder about  
6 Rockland Vending?7 A. I don't believe I know the exact dates of  
8 that.

9 Q. What month?

10 A. Probably in May.

11 Q. Was it after the incident with Mr. Gallagher  
12 or before?

13 A. I believe it was after.

14 Q. At whose initiative was the conversation?

15 A. I don't recall.

16 Q. What was the conversation?

17 A. I don't recall that either. Most of the time  
18 I spoke with Nan Ferri.19 Q. I'm not asking you about Ms. Ferri; I'm asking  
20 you about Mr. Kidder.

21 A. I understand that.

22 Q. So what conversation did you and he have about  
23 this matter?

24 A. I don't recall.

25 Q. You don't recall any of it?

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2 A. No, I don't.

3 Q. And as far as you remember, May of 2007 is the  
4 first month you spoke to him about Rockland Vending from  
5 the time you took over as Institutional Steward in  
6 January of '04; is that accurate?

7 A. I believe so.

8 Q. And it's your testimony, as I understand it --  
9 and, again, I just want to make sure I'm not misstating  
10 your testimony or am unclear on it -- that between May  
11 7th and May 9th, you did advise Ms. Ferri of your desire  
12 to take the funds directly from the machine when the  
13 driver came?

14 A. Yes.

15 Q. And it's your testimony she did say that was  
16 okay?

17 MR. SCHULZE: Objection.

18 A. She told me to contact Mr. Glassanos for final  
19 approval.20 Q. You're using the word "final approval" which  
21 you used before. She said it was okay but she wanted  
22 you to contact him for final approval; is that fair?

23 MR. SCHULZE: Objection.

24 A. She said that I needed to contact  
25 Mr. Glassanos. She did not say one way or the other.

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 2 Q. She didn't say one way or the other. Okay.  
 3 Did you ask her whether this had ever been done before?  
 4 A. No.  
 5 Q. Did she tell you whether it had ever been done  
 6 before?  
 7 A. No.  
 8 Q. Had you ever done this before?  
 9 A. No.  
 10 Q. Do you administer other contracts?  
 11 A. Yes.  
 12 Q. Or just vending?  
 13 A. No, any contracts with our facility.  
 14 Q. Do all of the contracts that you administer  
 15 have the same boilerplate language we looked at with  
 16 regard to termination?  
 17 MR. SCHULZE: Objection.  
 18 A. Yes, I would believe that.  
 19 Q. Have you ever been involved in terminating one  
 20 of those contracts before?  
 21 A. No.  
 22 Q. Have you ever been involved in dealing with  
 23 nonperformance of a contract before?  
 24 A. No.  
 25 Q. Before this incident, had you ever been

1 ROXANN CREEN 78  
 2 involved -- and by "this incident," I mean your dealings  
 3 with Rockland Vending -- had you ever been involved in  
 4 the period 2004 to 2007 with any form of nonperformance  
 5 on a contract?  
 6 A. No.  
 7 Q. This is the first incident?  
 8 A. Yes.  
 9 MR. SUSSMAN: Okay. Thank you for being  
 10 here.  
 11 MR. SCHULZE: I have, I think, just two  
 12 or three questions.  
 13 EXAMINATION BY MR. SCHULZE:  
 14 Q. After you left the visiting room on May 9th,  
 15 did you attempt to call Rockland?  
 16 A. Yes, I did.  
 17 Q. What time was that?  
 18 A. That was shortly after 9.  
 19 Q. Was that before or after the meeting you  
 20 referred to?  
 21 A. It was after the meeting.  
 22 Q. I refer you to Creen Exhibit 1 and  
 23 specifically to Appendix A entitled Standard Clauses for  
 24 all New York State Contracts. Was this Appendix A part  
 25 of your contract with Rockland Vending?

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1 ROXANN CREEN 79  
 2 A. Yes, it would have been.  
 3 Q. And is this a standard clause in all the  
 4 vending contracts in New York State, to your knowledge?  
 5 MR. SUSSMAN: Objection to the form.  
 6 A. Yes.  
 7 MR. SCHULZE: That's all I've got.  
 8 EXAMINATION BY MR. SUSSMAN:  
 9 Q. When you answered the last question, is this a  
 10 standard contract, what provision are you referring to?  
 11 A. The Appendix A.  
 12 MR. SUSSMAN: Thank you. Nothing  
 13 further.  
 14 (At 11:48 a.m., the examination of this  
 15 witness was concluded.)

16 \* \* \* \* \*

1 ROXANN CREEN 80  
 2 J U R A T  
 3  
 4 STATE OF )  
 5 COUNTY OF )  
 6 I, \_\_\_\_\_, have read the foregoing  
 7 record of my testimony taken at the time and place noted in  
 8 the heading hereof and do hereby acknowledge: (Check one)  
 9  
 10 ( ) That it is a true and correct transcript  
 11 of same  
 12  
 13 ( ) With the exceptions noted in the attached  
 14 errata sheet, it is a true and correct  
 15 transcript of same  
 16  
 17 ROXANN CREEN  
 18 Subscribed and sworn to before me  
 19 this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.  
 20  
 21 Notary Public  
 22 My commission expires: \_\_\_\_\_.

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1 ROXANN CREEN  
 2 E R R A T A S H E E T  
 3 Please note any errors or corrections on this sheet.  
 4 Indicate a reason for any change or correction.  
 5 PAGE \ LINE \ CHANGE \ REASON  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
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 24 \_\_\_\_\_  
 25 ROXANN CREEN

1 ROXANN CREEN  
 2  
 3 C E R T I F I C A T E  
 4  
 5  
 6 I, GAIL M. SHERRY, a Certified Realtime Reporter,  
 7 and Notary Public within and for the State of New York, do  
 8 hereby certify:  
 9 That the witness whose deposition is hereinbefore  
 10 set forth was duly sworn by me and that the within  
 11 transcript is a true and accurate record to the best of my  
 12 knowledge and ability.  
 13 I further certify that I am not related to any of  
 14 the parties to this action by blood or marriage and that I  
 15 am in no way interested in the outcome of this matter.  
 16 IN WITNESS WHEREOF, I have hereunto set my hand.  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

*Gail M. Sherry*  
 Gail M. Sherry, CRR, RMR

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1 ROXANN CREEN  
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 9 EXHIBITS MARKED FOR IDENTIFICATION  
 10 Creen Ex. 1 - DOCS INVITATION FOR BIDS 24 4  
 11 marked for identification.  
 12 Creen Ex. 2 - 5/11/07 LETTER TO FREED 63 14  
 13 FROM CREEN marked for identification.  
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